

From: [Bassin, Ian](#)
To: [Bassin, Ian](#); [Don W. Fox](#); Fugh.Justina@epamail.epa.gov
Subject: RE: OGE Views on Uncompensated Writing and Speaking
Date: Friday, March 19, 2010 11:43:49 AM
Importance: High

Justina – just checking in if you can talk at 12. Would love to close this out today.

Thanks,
Ian

From: Bassin, Ian
Sent: Friday, March 19, 2010 10:30 AM
To: 'Don W. Fox'; Fugh.Justina@epamail.epa.gov
Subject: RE: OGE Views on Uncompensated Writing and Speaking

Justina – will that work for you? If so, I can conference you both.

From: Don W. Fox [<mailto:dwfox@oge.gov>]
Sent: Friday, March 19, 2010 9:40 AM
To: Bassin, Ian; Fugh.Justina@epamail.epa.gov
Subject: RE: OGE Views on Uncompensated Writing and Speaking

Noon works for me.

From: Bassin, Ian [[\(b\)\(6\)](mailto:(b)(6))]
Sent: Friday, March 19, 2010 9:23 AM
To: Fugh.Justina@epamail.epa.gov; Don W. Fox
Subject: RE: OGE Views on Uncompensated Writing and Speaking

Do the two of you have any time for a quick call on this today? (b)(5)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Would 12 work?

From: Fugh.Justina@epamail.epa.gov [<mailto:Fugh.Justina@epamail.epa.gov>]
Sent: Thursday, March 18, 2010 11:45 PM
To: Don W. Fox
Cc: Bassin, Ian
Subject: Re: OGE Views on Uncompensated Writing and Speaking

Hi Don,
Thanks very much for the advisory opinion. One thing, though: (b) (5)

[REDACTED]

Gotta love spell check!

Cheers,

justina

-----"Don W. Fox" <dwfox@oge.gov> wrote: -----

To: Justina Fugh/DC/USEPA/US@EPA
From: "Don W. Fox" <dwfox@oge.gov>
Date: 03/18/2010 07:19PM
cc: "'Bassin, Ian'" <(b)(6)>
Subject: OGE Views on Uncompensated Writing and Speaking

Justina,

I'm attaching a final OGE advisory opinion discussing 807 and 702. (b)(5)

[REDACTED] I hope you will find
this useful and I am happy to discuss.

Don

[attachment "EPA letter.pdf" removed by Justina Fugh/DC/USEPA/US]

From: [Don W. Fox](#)
To: [Don W. Fox](#)
Subject: Fw: OGE Views on Uncompensated Writing and Speaking
Date: Sunday, March 21, 2010 6:35:27 PM

From: Bassin, Ian <(b)(6)>
To: Fugh.Justina@epamail.epa.gov <Fugh.Justina@epamail.epa.gov>; Don W. Fox
Sent: Sun Mar 21 13:53:52 2010
Subject: RE: OGE Views on Uncompensated Writing and Speaking

Ok I will call you both then

From: Fugh.Justina@epamail.epa.gov [mailto:Fugh.Justina@epamail.epa.gov]
Sent: Friday, March 19, 2010 8:06 PM
To: Bassin, Ian; Don W. Fox
Subject: Re: OGE Views on Uncompensated Writing and Speaking

11:30 works for me too.
Have a great weekend!

From: "Bassin, Ian" (b)(6)]
Sent: 03/19/2010 05:30 PM AST
To: "Don W. Fox" <dwfox@oge.gov>; Justina Fugh
Subject: RE: OGE Views on Uncompensated Writing and Speaking

sure

From: Don W. Fox [mailto:dwfox@oge.gov]
Sent: Friday, March 19, 2010 5:21 PM
To: Bassin, Ian; Fugh.Justina@epamail.epa.gov
Subject: RE: OGE Views on Uncompensated Writing and Speaking

11:30? Have a 10:00 that could run long.

From: Bassin, Ian [mailto:(b)(6)]
Sent: Friday, March 19, 2010 5:16 PM
To: Fugh.Justina@epamail.epa.gov; Don W. Fox
Subject: RE: OGE Views on Uncompensated Writing and Speaking

How about Monday at 11?

From: Fugh.Justina@epamail.epa.gov [mailto:Fugh.Justina@epamail.epa.gov]
Sent: Friday, March 19, 2010 1:12 PM
To: Bassin, Ian; Don W. Fox
Subject: Re: OGE Views on Uncompensated Writing and Speaking

Sorry -- no, I'm at an all day retreat ... Back on mon though.

From: "Bassin, Ian" (b)(6)]
Sent: 03/19/2010 09:22 AM AST
To: Justina Fugh; "Don W. Fox" <dwfox@oge.gov>
Subject: RE: OGE Views on Uncompensated Writing and Speaking

Do the two of you have any time for a quick call on this today? (b)(5)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Would 12 work?

From: Fugh.Justina@epamail.epa.gov [mailto:Fugh.Justina@epamail.epa.gov]
Sent: Thursday, March 18, 2010 11:45 PM
To: Don W. Fox
Cc: Bassin, Ian
Subject: Re: OGE Views on Uncompensated Writing and Speaking

Hi Don,
Thanks very much for the advisory opinion. One thing, though: (b) (5)

[REDACTED]

Gotta love spell check!

Cheers,
justina

-----"Don W. Fox" <dwfox@oge.gov> wrote: -----

To: Justina Fugh/DC/USEPA/US@EPA
From: "Don W. Fox" <dwfox@oge.gov>
Date: 03/18/2010 07:19PM
cc: "Bassin, Ian" <(b)(6)>
Subject: OGE Views on Uncompensated Writing and Speaking

Justina,

I'm attaching a final OGE advisory opinion discussing 807 and 702. (b)(5)

[REDACTED]

I hope you will find this useful and I am happy to discuss.

Don

[attachment "EPA letter.pdf" removed by Justina Fugh/DC/USEPA/US]

From: [Bassin, Ian](#)
To: Fugh.Justina@epamail.epa.gov
Cc: [Don W. Fox](#)
Subject: Draft Letter
Date: Monday, March 22, 2010 11:40:29 AM
Attachments: (b)(6) [resolution Take 1.doc](#)
(b)(6) [resolution Take 2.doc](#)

Here is their proposed draft options. They're fine with either.

Dear _____,

I serve as counsel for Laurie Williams and Alan Zabel in efforts to resolve the dispute about their website and non-commercial speech activities. We understand that the Office of Government Ethics (OGE) is issuing a new policy below to resolve this issue generically throughout the executive:

The purpose of section 807(b)(1) and (b)(2), in conjunction with section 702(b), is to ensure that public is not misled as to whether the views expressed by an Executive Branch employee in uncompensated teaching, writing, or speaking are those of the employee or those of the Government. A too literal parsing of either 807(b)(1) or (b)(2) divorced from this broader purpose could lead to unnecessarily restricting employee's rights of free speech and commentary. OGE believes that when it is clear from the actual language or context of an employee's teaching, writing, or speaking that the employee is representing personal rather than agency views, then purpose of the specific provisions discussed above has been met.

Consistent with that policy clarification, Ms. Williams and Mr. Zabel believe they can restore their website and resume public communications, with the following clarifications to honor previous EPA guidance.

- 1) They will remove the picture of an EPA government building.
- 2) When they engage in public freedom of expression, they will not list their government credentials in a manner that is more prominent than any of their others.
- 3) Their guiding criteria for all other exercises of First Amendment rights will be as follows: "The purpose of section 807(b)(1) and (b)(2), in conjunction with section 702(b), is to ensure that public is not misled as to whether the views expressed by an Executive Branch employee in uncompensated teaching, writing, or speaking are those of the employee or those of the Government. A too literal parsing of either 807(b)(1) or (b)(2) divorced from this broader purpose could lead to unnecessarily restricting employee's rights of free speech and commentary. OGE believes that when it is clear from the actual language or context of an employee's teaching, writing, or speaking that the employee is representing personal rather than agency views, then purpose of the specific provisions discussed above has been met.

"More specifically, when an employee speaks out on matters of public concern, is not being compensated and has provided an adequate disclaimer that the views expressed are not those of the government and only reflect personal opinions, then the employee may provide support for personal views by referencing qualifications and non-confidential experience from government service."

If you do not agree with their understanding, please feel free to contact me so that we can clarify. If we have not received any contrary guidance by March ____, a week after sending this letter, they will conclude that the disagreement is resolved and that they can proceed as summarized without further threat of disciplinary action.

Dear _____,

I serve as counsel for Laurie Williams and Alan Zabel in efforts to resolve the dispute about their website and non-commercial speech activities. We understand that the Office of Government Ethics (OGE) is issuing a new policy below to resolve this issue generically throughout the executive:

The purpose of section 807(b)(1) and (b)(2), in conjunction with section 702(b), is to ensure that public is not misled as to whether the views expressed by an Executive Branch employee in uncompensated teaching, writing, or speaking are those of the employee or those of the Government. A too literal parsing of either 807(b)(1) or (b)(2) divorced from this broader purpose could lead to unnecessarily restricting employee's rights of free speech and commentary. OGE believes that when it is clear from the actual language or context of an employee's teaching, writing, or speaking that the employee is representing personal rather than agency views, then purpose of the specific provisions discussed above has been met.

Consistent with that policy clarification, Ms. Williams and Mr. Zabel believe they can restore their website and resume public communications, with the following clarifications to honor previous EPA guidance.

- 1) They will remove the picture of an EPA government building.
- 2) When they engage in public freedom of expression, they will not list their government credentials in a manner that is more prominent than any of their others.
- 3) Their guiding criteria for all other exercises of First Amendment rights will be as follows: "The purpose of section 807(b)(1) and (b)(2), in conjunction with section 702(b), is to ensure that public is not misled as to whether the views expressed by an Executive Branch employee in uncompensated teaching, writing, or speaking are those of the employee or those of the Government. A too literal parsing of either 807(b)(1) or (b)(2) divorced from this broader purpose could lead to unnecessarily restricting employee's rights of free speech and commentary. OGE believes that when it is clear from the actual language or context of an employee's teaching, writing, or speaking that the employee is representing personal rather than agency views, then purpose of the specific provisions discussed above has been met. Once an employee provides that clarity on compliance with sections 702 and 807, the employee may provide support for personal views by referencing qualifications and non-confidential experience from government service."

If you do not agree with their understanding, please feel free to contact me so that we can clarify. If we have not received any contrary guidance by March ____, a week after sending this letter, they will conclude that the disagreement is resolved and that they can proceed as summarized without further threat of disciplinary action.

From: [Bassin, Ian](#)
To: Fugh.Justina@epamail.epa.gov
Cc: [Don W. Fox](#)
Subject: Draft (b)(6) Letter
Date: Monday, March 22, 2010 11:58:17 AM
Attachments: (b)(6) [resolution Take 1 imb.docx](#)

Justina,

Here is the letter as just discussed, with your suggested addition. Let me know if everyone will view this favorably if (b)(6) sends your way.

Best,
Ian

Ian Bassin
Deputy Associate Counsel
The White House

(b)(6)

Dear _____,

I serve as counsel for Laurie Williams and Alan Zabel in efforts to resolve the dispute about their website and non-commercial speech activities. We understand that the Office of Government Ethics (OGE) is issuing a new policy below to resolve this issue generically throughout the executive:

The purpose of section 807(b)(1) and (b)(2), in conjunction with section 702(b), is to ensure that public is not misled as to whether the views expressed by an Executive Branch employee in uncompensated teaching, writing, or speaking are those of the employee or those of the Government. A too literal parsing of either 807(b)(1) or (b)(2) divorced from this broader purpose could lead to unnecessarily restricting employee's rights of free speech and commentary. OGE believes that when it is clear from the actual language or context of an employee's teaching, writing, or speaking that the employee is representing personal rather than agency views, then purpose of the specific provisions discussed above has been met.

Consistent with that policy clarification, Ms. Williams and Mr. Zabel believe they can restore their website and resume public communications, with the following clarifications to honor previous EPA guidance.

- 1) They will remove the picture of an EPA government building.
- 2) When they engage in public freedom of expression, they will not list their government credentials in a manner that is more prominent than any of their others.
- 3) Their guiding criteria for all other exercises of First Amendment rights will be as follows: "The purpose of section 807(b)(1) and (b)(2), in conjunction with section 702(b), is to ensure that public is not misled as to whether the views expressed by an Executive Branch employee in uncompensated teaching, writing, or speaking are those of the employee or those of the Government. A too literal parsing of either 807(b)(1) or (b)(2) divorced from this broader purpose could lead to unnecessarily restricting employee's rights of free speech and commentary. OGE believes that when it is clear from the actual language or context of an employee's teaching, writing, or speaking that the employee is representing personal rather than agency views, then purpose of the specific provisions discussed above has been met.

"More specifically, when an employee speaks out on matters of public concern, is not being compensated and has provided an adequate disclaimer that the views expressed are not those of the government and only reflect personal opinions, then the employee may provide support for personal views by referencing qualifications and non-confidential experience from government service."

We further understand that these guidelines apply to my clients' speech on matters of public concern and that they remain subject to all other applicable standards of ethical conduct.

If you do not agree with their understanding, please feel free to contact me so that we can clarify. If we have not received any contrary guidance by March ____, a week after sending this letter, they will conclude that the disagreement is resolved and that they can proceed as summarized without further threat of disciplinary action.

From: Fugh.Justina@epamail.epa.gov
To: [Bassin, Ian](#)
Cc: [Don W. Fox](#)
Subject: RE: Draft Letter
Date: Tuesday, March 30, 2010 12:03:43 PM
Attachments: (b)(6) [resolution Take 2.docx](#)

(b)(5)



So, a revised letter (if we really want to go down this path) would look like this:

(See attached file: (b)(6) resolution Take 2.docx)

(b)(5)



Justina

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| From: |
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| "Bassin, Ian"

(b)(6)

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| To: |
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|Justina
Fugh/DC/USEPA/US@EPA
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|Cc: |
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|"Don W. Fox"
<dwfox@oge.gov>
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|RE: Draft Letter
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(b)(5)

What do we need to do to close it out today?

Ian

-----Original Message-----

From: Fugh.Justina@epamail.epa.gov [<mailto:Fugh.Justina@epamail.epa.gov>]

Sent: Tuesday, March 30, 2010 10:41 AM

To: Bassin, Ian

Subject: Re: Draft Letter

Hi Ian,

(b)(5)

ur General Counsel was on vacation all of last week, so we didn't have any opportunity to brief him on the letter or our suggested changes. In addition, we had a change in our DAEO, so needed to be sure that our new (and wonderful) DAEO is apprised

of the situation.

We just haven't been as nimble on this as I would have liked, but it's really due to circumstances beyond my control.
Justina

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| "Bassin, Ian" <(b)(6)>
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| To: |
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| Justina Fugh/DC/USEPA/US@EPA
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| 03/29/2010 06:50 PM
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| Subject: |
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| Draft Letter
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Justina,

(b)(5)

Thanks and sorry to bug on this, but I gave my word I'd get back to him today after you asked me to extend his requested deadline of last Wednesday and haven't heard back from you.

Ian

Ian Bassin
Deputy Associate Counsel
The White House

(b)(6)

Two page attachment
withheld in full under (b)(5)

Dear _____,

Formatted: Indent: Left: 0"

I serve as counsel for Laurie Williams and Alan Zabel in efforts to resolve the dispute about their YouTube video website and non-commercial speech activities. We understand that the Office of Government Ethics (OGE) is issuing a clarification to address new policy below to resolve uncompensated teaching, speaking and writing issues ~~this issue~~ generically throughout the executive.

~~The purpose of section 807(b)(1) and (b)(2), in conjunction with section 702(b), is to ensure that public is not misled as to whether the views expressed by an Executive Branch employee in uncompensated teaching, writing, or speaking are those of the employee or those of the Government. A too literal parsing of either 807(b)(1) or (b)(2) divorced from this broader purpose could lead to unnecessarily restricting employee's rights of free speech and commentary. OGE believes that when it is clear from the actual language or context of an employee's teaching, writing, or speaking that the employee is representing personal rather than agency views, then purpose of the specific provisions discussed above has been met.~~

Consistent with this OGE at policy clarification, Ms. Williams and Mr. Zabel believe they can restore their YouTube video website and resume public communications, with the following clarifications to honor previous EPA guidance.

1) They will remove the picture of an EPA government building.

2) They will retain the disclaimer.

3) When they engage in public freedom of expression, they will not list their government credentials in a manner that is more prominent than any of their others.

4) Their guiding criteria for all other exercises of First Amendment rights will be as set forth in the OGE clarification.

5) follows: "The purpose of section 807(b)(1) and (b)(2), in conjunction with section 702(b), is to ensure that public is not misled as to whether the views expressed by an Executive Branch employee in uncompensated teaching, writing, or speaking are those of the employee or those of the Government. A too literal parsing of either 807(b)(1) or (b)(2) divorced from this broader purpose could lead to unnecessarily restricting employee's rights of free speech and commentary. OGE believes that when it is clear from the actual language or context of an employee's teaching, writing, or speaking that the employee is representing personal rather than agency views, then purpose of the specific provisions discussed above has been met.

"More specifically, when an employee speaks out on matters of public concern, is not being compensated and has provided an adequate disclaimer that the views expressed are not those of the government and only reflect personal opinions, then the employee may provide support for personal views by referencing qualifications. They will remain and non confidential experience from government service."

~~_____ We further understand that these guidelines apply to my clients' speech on matters of public concern and that they remain subject to all other applicable standards of ethical conduct.~~

If you do not agree with their understanding, please feel free to contact me so that we can clarify. If we have not received any contrary guidance by March ____, a week after sending this letter, they will conclude that the disagreement is resolved and that they can proceed as summarized without further threat of disciplinary action.

From: Fugh.Justina@epamail.epa.gov
To: [Bassin, Ian](#)
Cc: [Don W. Fox](#)
Subject: Re: (b)(6) Matter
Date: Tuesday, April 06, 2010 6:49:14 PM
Attachments: (b)(6) resolution Take 4.docx

Turnabout is fair play, Ian, and you were SO WONDERFUL in helping with my Hatch question earlier today that I'm determined to be as responsive.

(b)(5)

|----->
| From: |
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|----->
| "Bassin, Ian" |

<(b)(6)>

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| To: |
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|----->
| Justina Fugh/DC/USEPA/US@EPA, "Don W. Fox" |
<dwfox@oge.gov>

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| Date: |
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| 04/06/2010 06:34 |

PM

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| Subject: |
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| (b)(6) |

Matter

Justina,

(b)(5)

(b)(5)

Can you please let me know if the attached is acceptable by the end of tomorrow? I'm out of the office on Friday and would love to resolve this by Thursday. (b)(5)

Many thanks for your patience and help with this,
Ian

Ian Bassin
Deputy Associate Counsel
The White House

(b)(6)

(See attached file: (b)(6) resolution Take 4.docx)

Dear _____,

I serve as counsel for Laurie Williams and Alan Zabel in efforts to resolve the dispute about their YouTube video and non-commercial speech activities. We understand that the Office of Government Ethics (OGE) is issuing a clarification to address uncompensated teaching, speaking and writing issues generically throughout the executive.

Consistent with this OGE clarification, Ms. Williams and Mr. Zabel believe they can restore their YouTube video and resume public communications, with the following clarifications to honor previous EPA guidance.

- 1) They will remove the picture of an EPA government building.
- 2) They will retain the disclaimer.
- 3) When they engage in public freedom of expression, they will not submit their government credentials in a manner that is more prominent than any of their others.
- 4) Their guiding criteria for all other exercises of First Amendment rights will be as set forth in the OGE clarification. Consistent with that clarification, when an employee speaks out on matters of public concern, is not being compensated and has provided an adequate disclaimer that the views expressed are not those of the government and only reflect personal opinions, then the employee may provide support for personal views by referencing qualifications and non-confidential experience from government service.
- 5) They will remain subject to all other applicable standards of ethical conduct.

They further understand that, consistent with these clarifications, their actions in connection with publication of an October 31, 2009 article in the Washington Post, "Cap-and-Trade Mirage", are consistent with the new guidance and would not result in disciplinary action.

If you do not agree with their understanding, please feel free to contact me so that we can clarify. If we have not received any contrary guidance by March ____, a week after sending this letter, they will conclude that the disagreement is resolved and that they can proceed as summarized without further threat of disciplinary action.

From: [Bassin, Ian](#)
To: Fugh.Justina@epamail.epa.gov
Cc: [Don W. Fox](#)
Subject: RE: (b)(6) Matter
Date: Tuesday, April 06, 2010 6:52:09 PM

Thanks so much Justina! This is great news. I will have their attorney send the letter to your attention so EPA can affirm it agrees with its contents in a response letter back and we can FINALLY reach conclusion on this. I really appreciate all your help on this. (b)(5)

Best and many thanks again,
Ian

-----Original Message-----

From: Fugh.Justina@epamail.epa.gov [<mailto:Fugh.Justina@epamail.epa.gov>]
Sent: Tuesday, April 06, 2010 6:49 PM
To: Bassin, Ian
Cc: Don W. Fox
Subject: Re: (b)(6) Matter

Turnabout is fair play, Ian, and you were SO WONDERFUL in helping with my Hatch question earlier today that I'm determined to be as responsive.

(b)(5)

|----->
| From: |
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| "Bassin, Ian"
(b)(6) |

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| To: |
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| Justina Fugh/DC/USEPA/US@EPA, "Don W. Fox"
<dwfox@oge.gov> |

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| 04/06/2010 06:34
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Justina,

(b)(5)
Can you please let me know if the attached is acceptable by the
end of tomorrow? I'm out of the office on Friday and would love to resolve this by Thursday. And
(b)(5)

Many thanks for your patience and help with this, Ian

Ian Bassin
Deputy Associate Counsel
The White House

(b)(6) (See attached file: (b)(6) resolution Take
4.docx)

From: Fugh.Justina@epamail.epa.gov
To: [Don W. Fox](#)
Cc: ["Gottry, Heather C."](#); [Dalheim, Karen L.](#); [Walter M. Shaub](#)
Subject: RE: quick question
Date: Friday, November 05, 2010 4:05:09 PM

yep, I heard from Karen. Sorry that I missed it myself, but my grateful thanks to all of you for your cheerful indulgence and help!

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| "Don W. Fox"
<dwfox@oge.gov> |
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| "'Gottry, Heather C.'" <(b)(6)>, Justina
Fugh/DC/USEPA/US@EPA |
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| "Dalheim, Karen L." <(b)(6)>, "Walter M. Shaub"
<wmshaub@oge.gov> |
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(b)(5)

-----Original Message-----

From: Gottry, Heather C. [mailto:(b)(6)]
Sent: Wednesday, November 03, 2010 10:25 AM
To: 'Fugh.Justina@epamail.epa.gov'; Don W. Fox
Cc: Dalheim, Karen L.
Subject: Re: quick question

Justina - (b)(5)

. I am out of the office for the rest of the week but will be available by blackberry and cell 703-927-4214. I am also copying Karen Dalheim who is heading the office while I am out and will be able to work with you on a potential waiver. Thanks.

- Heather

----- Original Message -----

From: Fugh.Justina@epamail.epa.gov <Fugh.Justina@epamail.epa.gov>
To: dwfox@oge.gov <dwfox@oge.gov>; Gottry, Heather C.
Sent: Wed Nov 03 10:01:01 2010
Subject: quick question

(b)(5)

Justina

Justina Fugh | Senior Counsel for Ethics | Office of General Counsel |
US EPA | Mail Code 2311A | Room 4308 Ariel Rios North | Washington, DC
20460 | phone 202-(b)(6) | cell 202-(b)(6) | fax 202-(b)(6)